IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2970 OF 2006.

1. Mr. Deepak Prithviraj Gupta ..Applicant
V/s
1. Vikas Omnarayan Varma
2. State of Maharashtra .. Respondents.

Miss Mhaisapurkar h/f Mr. M.K. Kocharekar for the applicant.

Mr. Shekhar Ingavale & Mr.Y.M. Nakhawa for respondent No.1.

Ms. Rajeshree M. Gadhvi, A.P.P. for the State.

CORAM : S.C. DHARMADHIKARI, J.

DATE : 7TH SEPTEMBER, 2006.

P.C.

. This is an application at the instance of the original complainant for cancellation of bail of the first respondent who has been arraigned as accused in CR.No. 145/2006 registered at Mahatma Phule Chowk Police Station, Kalyan alleging offences punishable under Sections 302, 323, 341, 34 and 109 of Indian Penal Code.

2. Miss. Mhaisapurkar, learned Advocate appearing for the applicant-original complainant submits that the eye witnesses account of the entire incident is that the

first respondent and co-accused Munna assaulted the deceased Guddukumar with sharp edged weapons, such as knife, chopper, hockey stick. The incident has occurred on account of rivalry in coconut business and because the deceased was acquitted from a criminal case where charge was under Section 307 of I.P.C. It was alleged that deceased and his associates had assaulted one Sunil Gupta (co-accused) who had taken help of the father of the first respondent herein. Upon acquittal from the said criminal case, the opposite group of first respondent and other accused threatened and thereafter assaulted the complainant as also the deceased.

3. Miss Mhaisapurkar has invited my attention to the statement of Pradipkumar Gupta who is servant of the applicant. In her submission, in his statement, a specific role is attributed to the first respondent, so also Munna Varma. She submits that there are recoveries of weapons at the instance of the present applicant. There is eye witness account of the entire incident. The vehicle Tata Indica is seized.

4. She submits that an application for bail of all accused including Munna Om Varma was earlier rejected.

But as far as first respondent is concerned, he has been enlarged on bail. She submits that the Hon'ble Supreme Court in the case of A. Tripathi V. State of U.P. **2005 (8) SCC 21** has observed that when the allegations are grave and serious, so also the offence is punishable with severe punishment and status and character of the accused is such that a free and fair trial will not be possible, then no accused shall be enlarged on bail.

5. On the other hand, Mr. Ingavale appearing for the first respondent states that the application is misconceived because it proceeds on the basis that co-accused Munna having identical role as that of the first respondent, was denied bail. He submits that the copy of the order annexed to the present application is when Munna was denied bail prior to the filing of the charge-sheet. Thereafter, not only the respondent No.1 but Munna has been enlarged on bail. He submits that the trial Court has come to a prima facie conclusion that the entire incident is false in as much as all family members have been roped in, in addition to one Sunil Gupta. Every member of the Varma family has been enlarged on bail. He submits that the investigations are complete and charge-sheet is filed. No supervening

circumstances are brought on record to cancel the bail granted in favour of the present respondent No.1.

6. Having perused the application and the annexures so also noting the fact that the co-accused been enlarged on bail after charge-sheet is filed. In my view, it would not be proper to interfere with the order of the trial Judge. However, the trial Judge considering the entire case ought to have imposed stringent conditions while enlarging the applicant before him on bail. This is a case where complainant, who was acquitted from a criminal case which was instituted at the instance of the first respondent and co-accused Munna, was assaulted and succumbed to the injuries. Assuming there is a prima facie case, the applicant could have been granted bail but not without stringent condition being imposed. Ms. Mhaispurkar has strenuously urged that there are recoveries at the instance of the applicant. The vehicles are seized. Therefore, the order granting bail be set aside.

7. Upon query from the Court and when it was brought to my notice that co-accused Sunil Gupta is not granted bail, Mr. Ingavale appearing for the first

respondent states that another co-accused Munna was granted bail on similar conditions and no challenge is laid to the order granting him bail. He submits that the first respondent is willing to abide by such conditions as may be imposed by this Court. Taking over all view of the matter, when the application is made for cancellation of bail of the one of the accused when his role and that of the co-accused Munna is identical, interest of justice would be subserved, if the present application is disposed of by directing that the first respondent Vikas Omnarayan Varma shall not enter Kalyan city limits for a period of six months from today. Mr. Ingavale, makes a statement that within a period of 8 days from today the first respondent will inform Mahatma Phule Chowk Police Station the details of his new residential address and shall report to the nearest Police Station till the conclusion of the trial once in a week. With this modification the order of the trial Court is confirmed and present application is disposed of.

(S.C. DHARMADHIKARI, J.)